

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8426 of 1990

WITH

SPECIAL CIVIL APPLICATION NO.17 of 1991

WITH

CIVIL APPLICATION NO.71 of 1991

IN

SPECIAL CIVIL APPLICATION NO.8426 OF 1990

AND

CIVIL APPLICATION NOS.150 & 190 OF 1991

IN

SPECIAL CIVIL APPLICATION NO.17 OF 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHAGVATIPRASAD D. BRAHMBHATT

Versus

STATE OF GUJARAT

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Appearance:

(In both SCAs:)

None present for Petitioners

MR SR DIVETIA, APP, for Respondent No. 1, 2

(In CAs:)

MR NK MAJMUDAR for Applicants in CA 71/91 & 150/91  
None present for Applicants in CA 190/91

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CORAM : MR.JUSTICE S.K.KESHOTE  
Date of decision: 26/06/97

ORAL JUDGMENT

#. Perused the Special Civil Applications and heard learned counsel for the respondents.

#. The petitioners in Special Civil Application No.8425 of 1990 challenges the action of the respondents in not promoting them in the cadre of Gujarat Development Service Class II inspite of the fact that the petitioners are declared successful in the departmental examination held by the Secretary, Panchayat and Rural Housing Department, Government of Gujarat, and the action of the respondents in not preparing the list and thereafter promoting the petitioners due to issuance of Taluka Development Officer (Gujarat Development Services Class II) Recruitment Rules 1990 on 27th September 1990, on the ground that the action and/or order is arbitrary, capricious and in violation of Articles 14 and 16 of the Constitution of India and as well in disregard of rulings of the Hon'ble Supreme Court.

#. The petitioners, in this Special Civil Application were appointed on the post of ADEI and on the post of Extension Officer. Some of the petitioners were promoted to the next higher post. The petitioners have come up with the case that the State Government framed Recruitment Rules for the post of Taluka Development Officers on 9.7.65. Thereafter the State Government under Article 309 of the Constitution of India, framed Recruitment Rules vide Notification dated 29.7.71. These Rules provided the same things provided in the earlier recruitment Rules of 1965. Only the ratio was changed. Then comes the Notification dated 16.9.74 under which the Gujarat Panchayat Service (Promotion to cadre in State services) Rules 1974, has been notified. The schedule attached to the above said Rules provided categories of officers working in the Panchayat service who can be promoted in the State services pursuant to the above said Rules. One of the conditions was that the Officers were required to pass the requisite examination held by the

GPSC. The petitioners have come up with the case that all the petitioners were eligible to get promotion in the cadre of Gujarat Development Service Class II as all of them have already passed departmental examination held by the Gujarat State. The petitioners appeared in the examination held by the State on 2/3.5.90 for promotion to class II post, result of which has been declared on 19.7.90 and all the petitioners were declared successful in the said examination. Though after passing of the said examination, it was obligatory on the part of respondents to prepare list and give promotion, it has not been done. However, earlier Rules were superseded and fresh recruitment Rules, under proviso to Article 309 of the Constitution of India for regulating the recruitment to the post of Taluka Development Officer in the Gujarat Development Services Class II have been framed. These Rules were published vide Notification dated 27.9.90. Rules 1974 have also been amended vide Notification dated 27.9.90. The consequence of the aforesaid Rules and the amended Rules 1974 was that some of the posts of Panchayat Services were deleted from getting promotion in the Gujarat Development Services Class II. The petitioners, in this Special Civil Application prayed that the respondents be directed to consider and promote the petitioners in the cadre of Gujarat Development Services Class II and declare that the new rules for the Taluka Development Officers (Gujarat Development Service Class II) Recruitment Rules 1990 are not applicable to the petitioners. Further prayer has been made for restraining the respondents from promoting any other candidate pursuant to the Recruitment Rules 1990.

#. This Court has ordered for maintaining Status-quo in this Special Civil Application.

#. In Special Civil Application No.17 of 1991, grievance of the petitioners therein is identical and as such, it is not necessary to give out the facts of this case in detail. In Special Civil Application No.17 of 1991, two Civil Applications, being Civil Application No.150 of 1991 and 190 of 1991 have been filed by the applicants therein. In the first Civil Application, there are five applicants, and in the second Civil Application there are as many as fourteen applicants. These applicants have prayed for impleading them as respondents in Special Civil Application No.17 of 1991 on the ground that the cadres of the applicants, i.e. the cadre of Deputy Chitnis and Assistant T.D.O. are the only cadres which are held eligible to be promoted on the post of T.D.O. under the Rules 1990 and as such, any decision given in

this Special Civil Application will adversely affect their rights.

#. In Special Civil Application No.8426 of 1990, the applicants, in all five, filed Civil Application No.71 of 1991 for impleading them as party-respondents in the Special Civil Application and the ground given therein is similar as aforesaid.

#. On behalf of applicants, in Civil Application No. 150 of 1991, and Civil Application No.71 of 1991, Mr.N.K. Majmudar has put appearance. So far as Civil Application No.190 is concerned, none has put appearance.

#. The learned counsel for the respondent-State and the learned counsel for the applicants in above two Civil Applications Shri N.K. Majmudar contended that the Rules 1990 which have been framed under Article 309 of the Constitution of India by the Government, have been framed in exercise of legislative powers and the same are not questionable on the ground of any malafide. The learned counsel for the respondent-State and the applicants in Civil Applications further contended that in both these Special Civil Applications, prayer has not been made by the petitioners for declaring these Rules, i.e. Rules 1990 to be ultra vires of the Constitution, but the only prayer has been that these Rules are not applicable to the case of petitioners. So, the only limited ground for consideration of this Court is whether these Rules are applicable to the case of the petitioners or not. In absence of challenge to the validity of Rules, the said Rules are to be taken to be valid and only the interpretation has to be given whether these Rules are applicable to the case of the petitioners or not. It has next been contended that the Rules 1990 were only prospective and they have not been given retrospective effect and as such no grievance could have been made by the petitioners in these Special Civil Applications against these Rules.

#. I have given my thoughtful considerations to the submissions made by the learned counsel for respondent-State and applicants in Civil Applications.

##. I find sufficient merits in the contention raised by the learned counsel for respondent-State as well as for the applicants that in these petitions, the validity of Rules 1990 has not been challenged by the petitioners. The petitioners in these Special Civil Applications have not made any prayer for declaring these Rules to be ultra vires of any provision of the Constitution of India. So

in the absence of the prayer challenging the validity of these Rules and further prayer for declaring the same to be ultra vires of the Constitution, it is not necessary to go on and to examine the validity of these Rules. The only prayer made by the petitioners in these Special Civil Applications is that the Rules 1990 are not applicable to their case.

##. Under Article 309 of the Constitution of India, His Excellency the Governor of State has the function of framing the Rules and such Rules can be framed by giving them retrospective effect. However, the learned counsel for the respondent-State very fairly conceded that the Rules 1990 were only prospective and not retrospective. So, the posts of Gujarat Development Services Class II which were available for promotions immediately prior to the date of coming into force of Rules 1990 are to be filled in accordance with the old Rules. The posts which have come into existence by way of creation or otherwise on or after 27th September 1990, could have been filled in under the Rules 1990. These Rules 1990 could not have been put into service or use of for filling of the posts of the Gujarat Development Services Class II, which were available as on 26th September 1990. So it is hereby declared that the Rules 1990 are not applicable and cannot be made use of for filling up the posts of Gujarat Development Services Class II which were available as on 26th September 1990.

##. These Special Civil Applications are allowed in part and it is hereby declared that all the posts of Gujarat Development Services Class II, which were available for recruitment as on 26th September 1990 and earlier to it shall be filled in accordance with the old Rules. New Rules of 1990 shall be applicable only for filling up the posts of Gujarat Development Services Class II which have come into existence on or after 27th September 1990. Both these Special Civil Applications and Rule therein stand disposed of in aforesaid terms with no order as to costs.

##. In view of the fact that Special Civil Applications are disposed of, no order on Civil Application No.71 of 1991 in Special Civil Application No.8426 of 1990 and in Civil Applications No.150 of 1991 and 190 of 1991 in Special Civil Application No.17 of 1991. All these Civil Applications are dismissed.

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